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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 11CR1841-LAB

11 JESUS VIDAL LUNA-CHAGOLLA,

CASE NO. 11-CV-2745-LAB

12 Petitioner,

13 vs.

**ORDER DENYING 28 U.S.C.  
§ 2255 HABEAS PETITION**

14 UNITED STATES,

15 Respondent.

16  
17 Luna-Chagolla is currently serving a 48-month sentence for possession of  
18 methamphetamine with intent to distribute. *See United States v. Luna-Chagolla*, 11-CR-  
19 1841-LAB. Now before the Court is his habeas petition brought pursuant to 28 U.S.C. §  
20 2255, through which he seeks a sentence reduction. He seeks the reduction on the ground  
21 that, due to his alien status, he is ineligible for early release into a halfway house (and other  
22 penal benefits) in violation of his Fifth and Fourteenth Amendment rights to due process and  
23 equal protection. This is a familiar claim that aliens make in federal habeas petitions, using  
24 (or guided by) what appears to be a form pleading, and the Court has consistently rejected  
25 it.

26 To state an equal protection claim, a plaintiff must allege he was treated differently  
27 from other similarly situated persons, *see City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.  
28 432, 439 (1985), and deportable aliens are not "similarly situated" to United States citizens.

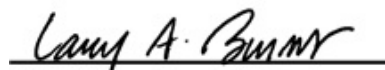
1 It is not an equal protection violation to allow United States citizen-inmates, who must re-  
2 enter domestic society, to participate in rehabilitative or other programs while denying that  
3 privilege to deportable inmates. See, e.g., *Santos v. United States*, 940 F.Supp. 275, 281  
4 (D. Hawaii 1996) (one's status as deportable alien, which may result in ineligibility for less  
5 restrictive terms of confinement, cannot justify downward departure; plaintiff failed to state  
6 an equal protection claim "because deportable aliens are not 'similarly situated' to United  
7 States citizens"). The Supreme Court "has firmly and repeatedly endorsed the proposition  
8 that Congress may make rules as to aliens that would be unacceptable if applied to citizens."  
9 *Demore v. Kim*, 538 U.S. 510, 521-22 (2003).

10 This Court has previously rejected the claim that an alien's ineligibility for various  
11 prisoner programs or benefits violates that person's rights. See *Rendon-Inzunza v. United*  
12 *States*, 2010 WL 3076271 (S.D. Cal. 2010); *Lizarraga-Lopez v. United States*, 89 F.Supp.2d  
13 1166 (S.D. Cal. 2000). Those holdings stand. The purpose of halfway houses is to facilitate  
14 the reintegration of prisoners into the community, but prisoners in Luna-Chagolla's position  
15 are released first to the Attorney General and then to a foreign community. Moreover,  
16 halfway houses are still custodial institutions wherein prisoners serve out their full sentences,  
17 and from which deportable aliens would be a unique flight risk.

18 No due process or equal protection issue arises merely because a defendant's alien  
19 status excludes him from certain programs available to citizens, within the prison system or  
20 without. Accordingly, Luna-Chagolla's argument that the Court should consider his request  
21 for an additional downward departure on that basis is rejected. His habeas petition is  
22 accordingly **DENIED**. The Court also **DENIES** him a certificate of appealability. See 28  
23 U.S.C. § 2253(c)(2).

24  
25 **IT IS SO ORDERED.**

26 DATED: January 24, 2013

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28 **HONORABLE LARRY ALAN BURNS**  
United States District Judge